(12)

No. 95-1201

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

STEPHEN A. SILLMAN, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF FOR APPELLANTS

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ARGUMENT

Most of the arguments presented by Appellee State of California ("Appellee" or "State") seek to distract from the one issue that this Court must decide: whether a district court can order implementation of an unprecleared election plan in Monterey County, California ("County"), a jurisdiction subject

to the Section 5 preclearance requirements of the Voting Rights Act, 42 U.S.C. § 1973c. To the extent that the State addresses this question, its brief reflects a fundamental misunderstanding of this Court's longstanding Section 5 precedents.

I. THE DISTRICT COURT'S ORDER VIOLATED THE SECTION 5 PRECLEARANCE PROVISIONS

Appellee believes that Appellants are not entitled to a Section 5 remedy "because neither discrimination nor retrogression has been established." Appellee State's Brief on the Merits ("Appellee Brief") at 20. Yet that argument ignores the threshold issue presented when a Section 5 covered jurisdiction has implemented a change in voting practices that has not been precleared.[1] As this Court held in *Allen v. State Bd. of Elections*: "Such a change could be made either with or without a discriminatory purpose or effect; however, the purpose of § 5 was to submit such changes to scrutiny." 393 U.S. 544, 570 (1969).

Appellee also contends that remedial relief is inappropriate because the Section 5 violation is not "material." Appellee Brief at 20. Irrespective of how the State chooses to label this Section 5 violation, a simple fact remains: the at-large or countywide method of electing municipal court judges has not

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[1] The district court has consistently held that a series of county ordinances which consolidated judicial districts into a single county judicial district with countywide elections were subject to the Section 5 preclearance provisions and could not be implemented absent Section 5 approval. *See* Joint Appendix ("Jt. App.") 47 (Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendant's Motions), 123 (Order Enjoining Elections Pending Preclearance of Permanent Plan Except for Court-Ordered Special Election in 1995).

received Section 5 preclearance. Absent such approval, the at-large method of election cannot be implemented in any judicial elections. *Clark v. Roemer*, 500 U.S. 646, 652 - 53 (1991).

The State seeks to distinguish this precedent on two grounds. First, the State argues that there is no Section 5 violation because the district court did not implement the County's unprecleared plan but instead, implemented an at-large election plan pursuant to the court's equitable powers. Appellee Brief at 19. The State's argument elevates form over substance.

There is no dispute that the countywide method of electing municipal court judges incorporated in the district court's November 1, 1995, Order is the same as the countywide method of election resulting from the implementation of the unprecleared county ordinances.

The fact that the district court issued the November 1, 1995, Order pursuant to its inherent equitable powers does not, under the circumstances presented in this appeal, insulate the countywide plan from Section 5 review. In *McDaniel v. Sanchez*, 452 U.S. 130 (1981), this Court articulated the standards for determining whether election plans incorporated within a federal court order had to be submitted for Section 5 approval prior to implementation. As stated by this Court, election plans incorporated in a federal court order which reflect the policy choices of the Section 5 covered jurisdiction cannot be implemented until the plan secures Section 5 approval. *Id.* at 153.[2]

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[2] Although election plans which do not reflect the jurisdiction's policy choices are not subject to Section 5 preclearance, such court-ordered plans " '... should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5

The countywide method of election incorporated in the November 1, 1995, Order is not a court-ordered plan exempt from Section 5 preclearance. At the time this litigation was filed in 1991, the method of electing municipal court judges was countywide. Clearly, this election method was the direct outcome of the County's express policy choices. These policy choices resulted in the consolidation of the County's municipal and justice court districts into a single municipal court district with countywide elections.

By reverting to the countywide method of election for municipal court judges, the district court's November 1, 1995, Order reflects the County's policy choices. In fact, the district court earlier had noted that the "...county-wide election system was the legislative choice of the citizens prior to the filing of this lawsuit." Jt. App. 172. Accordingly, the countywide method of election is not insulated from Section 5 preclearance. Absent such review and approval, the system cannot be implemented in any elections. *Cf. Clark*, 500 U.S. at 652 - 53.

Affirming the district court's Order would result in circumvention of the Section 5 preclearance requirements. Political subdivisions subject to the preclearance requirements could avoid Section 5 by simply awaiting litigation and then requesting the district court to implement the voting change as an equitable remedy. *See* Brief for Appellants at 38 - 40. For these reasons, the November 1, 1995, Order must be reversed.

Second, the Appellee argues that the countywide method of electing municipal court judges has been implemented pursuant to state statutes which are not subject to Section 5 preclearance. Appellee Brief at 19 - 20. This argument is similarly without merit. The consolidation of the judicial

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cases.' " *McDaniel*, 452 U.S. at 149.

districts was dependent upon the county ordinances. The county ordinances modified judicial district boundaries and ultimately resulted in the establishment of a countywide method of election for municipal court judges. Absent Section 5 approval, this countywide election plan resulting from these county ordinances cannot be implemented.

The Appellee argues that the appropriate focus should be on subsequent state statutes which superseded the county ordinances. Appellee Brief at 28 - 30. The Appellee contends that the authority to conduct countywide municipal court elections is now derived from state statutes, not the county ordinances. As such, Appellee believes, the issues related to the ordinances have been rendered moot. This argument was considered and rejected by the district court.[3] Indeed, the district court's permanent injunction against the implementation of the countywide system remains in effect. *See* Jt. App. 59, 173.

In summary, the district court committed an error in law by implementing a countywide method of electing municipal court judges, especially in view of the district court's finding that there continues to be a Section 5 violation. Jt. App. 166. Given this finding and the corresponding permanent injunction, the lower court's November 1, 1995, Order represents a substantial departure from this Court's precedent and should be reversed.[4]

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[3] While the Appellee is free to raise this argument again in future proceedings, Jt. App. 166, n. 2, the possibility that it may prevail is pure speculation and certainly cannot justify affirming the district court's Order.

[4] Appellants address below the remaining arguments of the Appellee regarding the Tenth Amendment to the United

II. IT IS UNCONTESTED THAT THE DISTRICT COURT HAD ALTERNATIVES TO THE UNPRECLEARED COUNTYWIDE PLAN

A district court may allow implementation of an unprecleared election plan only if "extreme circumstances" are present. *Clark*, 500 U.S. at 654 - 55. No such exigency existed here. Indeed, the district court had various alternatives available other than implementation of the unprecleared countywide election plan. Brief for Appellants at 22. These alternatives could have been timely explored in an evidentiary hearing. For example, the district court's concerns regarding the extension of terms of those municipal court judges elected in the June 6, 1995, special judicial election could have been addressed by conducting an evidentiary hearing into the constitutionality of that election plan. If, upon proper reflection, the district court concluded that the plan was unconstitutional, it could have devised an alternative district-based plan which met constitutional standards.

There was ample opportunity for the district court to

States Constitution, *infra* pp. 16 - 18, and whether the consolidation ordinances are subject to Section 5, *infra* at 8 - 12. Finally, the Appellee also claims that the defense of laches bars Section 5 relief. In making this argument, the State focuses on the fact that the relevant ordinances were enacted several years prior to this action being filed in 1991. But the obligation to comply with Section 5, throughout this passage of time, was upon the covered jurisdiction, not upon the Appellants. *See Dotson v. City of Indianola*, 514 F.Supp. 397, 401 (N.D.Miss. 1981), *aff'd*, 456 U.S. 1002 (1982). Further, "[t]he duty to obtain federal approval of new voting [changes] ... is a continuing one. It arises anew each time the defendant enacts or seeks to administer an uncleared voting regulation." *Id.*

conduct such an evidentiary hearing.[5] Even if there was not enough time to conduct such a hearing prior to the commencement of the March 26, 1996, electoral process, a judicial election could have been scheduled to coincide with the general election in November 1996, with any runoffs in December, all in advance of the January 1997 expiration of terms.

Clearly, alternatives existed. In fact, even the Appellee has never contested the fact that these alternatives were available to the district court. No "extreme circumstances" were present necessitating the district court's November 1, 1995, Order to implement an unprecleared election plan.

III. THE COUNTYWIDE METHOD OF ELECTION INCORPORATED IN THE NOVEMBER 1, 1995, ORDER VIOLATES THE STANDARDS FOR COURT-ORDERED PLANS

As demonstrated above, the countywide method of election ordered by the district court is not exempt from Section 5 preclearance and thus, cannot be implemented in any elections until Section 5 approval is obtained. *McDaniel*, 452 U.S. at 153. However, should this Court deem the court-ordered election plan exempt from Section 5 preclearance, this plan nonetheless violates the standards established for court-ordered plans.

The most significant standard is the application of a retrogression analysis to the court-ordered plan. *See* Brief for

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[5] Indeed, at the September 28, 1995, status conference, Appellants requested an evidentiary hearing to determine whether a court-ordered remedy would be appropriate. Jt. App. 20, Docket Entry No. 161, 30 - 31.

Appellants at 38 - 42. Under any retrogression measure, the countywide method of election results in a retrogression of minority voting strength. In conducting a retrogression analysis, the "last legally enforceable practice or procedure used by the jurisdiction," 28 C.F.R. § 51.54(b), becomes the appropriate benchmark for determining whether a new voting change results in a reduction of minority voting strength. Appellants contend that the appropriate benchmark for evaluating the retrogressive effect of the countywide method of election is the temporary district election plan which received Section 5 approval and was implemented in the June 6, 1995, special judicial election. Brief for Appellants at 41 & n. 29. The 1995 plan contained two election districts each consisting of a 52% Latino eligible voter population, while the countywide election plan contained a 17% Latino eligible voter population. Appellants' Jurisdictional Statement Appendix 89, 91. A reduction from 52% to 17% constitutes retrogression. Alternatively, when measured against the election plan in place on November 1, 1968, the date of Section 5 coverage for the County, the countywide method of election is also retrogressive. The 1968 judicial election plan contained three districts each having over a 50% Latino eligible voter population.[6]

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[6] For these precise reasons, the County stipulated that it could not demonstrate that the countywide system did not have a retrogressive effect on Latino voting strength. Brief for Appellants at 8 - 9. The Appellee attacks this stipulation as "far too conclusory [*sic*] and nebulous" to support any remedial response because the County did not explain "why" it could not prove it was unable to demonstrate the lack of a retrogressive effect. Brief for Appellee at 23 - 24. The Appellee's attack on a supported, written stipulation of a party is particularly curious in light of its reliance on an oral statement of a lawyer as the only "evidence" that the June 1995 plan was race-based.

The Appellee seeks to cloud this analysis in arguing that retrogression has not been established. Appellee Brief at 20 - 28. Yet Appellants need not establish retrogression; instead, the district court may not implement a court-ordered plan exempt from Section 5 review unless it is shown to be nonretrogressive. *McDaniel*, 452 U.S. at 147 - 50. But since the district court never conducted the necessary evidentiary hearing to assess the plan's retrogressive nature, this essential predicate is missing.

Finally, assuming *arguendo* that neither the 1968 election plan nor the June 6, 1995, election plan can properly serve as benchmarks, the district court's retrogression analysis remains seriously flawed. Pursuant to *Wilkes County, Georgia v. United States*, 450 F.Supp. 1171, 1176 (D.D.C. 1978), *aff'd mem.*, 439 U.S. 999 (1978), if no plan is available for comparison purposes, the district court should have compared the countywide method of election with a district-based election plan which fairly reflects the voting strength of the minority voting community. But the district court instead held that it "cannot say that a county-wide election plan is necessarily unlawfully retrogressive *in comparison with the prior plan or the system in effect prior to the consolidation ordinances*." Jt. App. 172 (emphasis added). The district court thus failed to properly analyze whether its countywide method of election was retrogressive and should never have ordered implementation of such an election plan before comparing it with a plan which fairly reflects the voting strength of the Latino community in Monterey County.

The Appellee asserts an additional argument regarding retrogression. The Appellee states that no meaningful retrogression analysis can be conducted because: 1) the different judicial offices involved in the consolidation process foreclose such an analysis; and 2) the different population and geographic sizes of each of the judicial districts preclude such an analysis.

Appellee Brief at 26. Appellee does not provide any legal support for this restrictive interpretation and application of the retrogression analysis. Under the Appellee's framework, a conversion of a justice court to a municipal court which admittedly reduced the voting strength of the minority community would not be subject to Section 5 review. Similarly, the consolidation of a heavily populated municipality with a sparsely populated municipality which resulted in a reduction of minority voting strength would also be exempt. Yet applicable precedent and the federal regulations governing the application of Section 5 do not support such a draconian result.

The regulations require a focus on changes in the voting constituency of an elective office and the effect of these changes on minority voting strength. *See, e.g.*, 28 C.F.R. § 51.13 (e), § 51.54 (a). In changes involving annexations to municipalities, usually a smaller population is annexed to a larger municipal population base. This disparity in population size does not preclude a retrogression analysis. On the contrary, the retrogression analysis focuses on whether there is a reduction of minority voting strength in the municipality as a result of the annexations. *See, e.g., Perkins v. Matthews*, 400 U.S. 379 (1971); *see also City of Port Arthur v. United States*, 459 U.S. 159, 165 (1982): "[Perkins] held that annexations by a city are subject to § 5 preclearance because increasing the number of eligible voters dilutes the weight of the votes of those to whom the franchise was limited before the annexation and because the right to vote may be denied by dilution or debasement just as effectively as by wholly prohibiting the franchise."

Under the Appellee's argument, minority voters would not have any Section 5 protection when a justice court district with a small population containing a majority of Latino voters is consolidated with a municipal court district resulting in a consolidated judicial district containing less than a majority of

Latino voters. According to the Appellee's argument, since the consolidation eliminated a justice court district, one cannot conduct a retrogression analysis because there are two different judicial offices involved. However, the Appellee's argument again elevates form over substance.

The appropriate focus in this example is on whether there has been a reduction in minority voting strength. The transfer of judicial responsibilities from a justice court judge to a municipal court judge, by itself, might be exempt from Section 5 review. *See Presley v. Etowah County Comm'n*, 502 U.S. 491 (1992). However, when the change involving the transfer of judicial duties is accompanied by a change affecting both the voting constituency of the judicial district and the voting strength of the minority community, such a change is not exempt from Section 5 review.[7] A reduction in voting strength would constitute retrogression. As a result, the Section 5 covered jurisdiction would have to modify its election system to fairly reflect the voting strength of the minority community in order to secure approval for the consolidation of the previously separate voting constituencies. *City of Rome v. United States*, 446 U.S. 156, 187 (1980).[8]

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[7] For these reasons, the district court concluded that the ordinances effecting these changes were subject to Section 5. Jt. App. 54.

[8] The Appellee argues that the inapplicability of the one person one vote principle to elective judicial offices also renders the retrogression analysis meaningless. Appellee Brief at 28. Again, the Appellee's argument is predicated upon a faulty assumption. Exemption from the one person one vote principle does not automatically bar a retrogression analysis. If it did, then consolidation of multiple municipalities into a single municipality with accompanying changes in voting constituencies

Accordingly, assuming the issue of retrogression is relevant, this Court should reverse the district court's November 1, 1995, Order for failure to comply with the standards established for implementation of court-ordered plans which are exempt from Section 5 review.[9]

IV. THE CONSTITUTIONALITY OF THE JUNE 6, 1995, ELECTION PLAN IS NOT PROPERLY BEFORE THIS COURT

The constitutionality of the June 1995 election plan only becomes relevant in the unlikely event that this Court finds that the November 1, 1995, Order is exempt from the preclearance requirement in that it does not reflect the County's policy choices. *See*, *supra*, at pp. 3 - 5. But even under such a scenario, this Court still must hold that the district court, by its failure to properly assess the constitutionality of the June 1995 plan, erred in refusing to extend the terms of the sitting judges

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and minority voting strength would also be exempt. In this example, the one person one vote principle is inapplicable to evaluate population disparities since the original municipalities were separate political entities. Yet the reduction in minority voting strength could clearly be evaluated in a retrogression analysis. *See*, *e.g.*, *City of Port Arthur*, 459 U.S. at 165 - 66 (one person one vote principle not directly applicable to municipal annexations yet reduction in minority voter population subject to retrogression analysis).

[9] The district court's November 1, 1995, Order also violated other standards for court-ordered plans. *See* Brief for Appellants at 42 - 45 (district court should have determined that countywide method of election did not violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and provided persuasive justification for not implementing single-member districts).

elected under that plan.

As a procedural matter, critical to the constitutional analysis, the district court did not even conduct an evidentiary hearing to determine if the election plan was unconstitutional. Absent this essential step, the district court had no factual predicate for its conclusions. The district court's concerns regarding the constitutionality of the election plan, therefore, cannot justify the implementation of an unprecleared countywide plan.

Nevertheless, armed with this Court's recent decisions in *Miller v. Johnson*, 115 S.Ct. 2475 (1995), *Shaw v. Hunt*, 64 U.S.L.W. 4437 (June 13, 1996), and *Bush v. Vera*, 64 U.S.L.W. 4452 (June 13, 1996), Appellee takes aim at the temporary district plan, alleging that it was "race-based," that it served no compelling state interest, and was not "narrowly tailored," to remedy the County's undisputed violation of Section 5. Appellee Brief at 44 - 45.

The district court similarly believed that *Miller* raised "substantial doubt as to whether legislative division into race-based districts or election areas can ever withstand constitutional scrutiny." Jt. App. 167. Without any fact-finding as to the Appellee's allegations converting *Miller* into a *per se* prohibition on race-based remedial orders, the district court refused to extend the terms of the judges elected pursuant to the June 6, 1995, election plan.

Nothing in *Miller*, *Bush*, or *Shaw* justifies this expedient dispatch of what Appellants can prove is an entirely legal plan. Nor do those decisions diminish a district court's power to remedy proven violations of the Voting Rights Act, and its duty to insure that, in cases involving jurisdictions subject to the Section 5 preclearance provisions, the court-ordered plans do

not cause any retrogression of minority voting strength. *See McDaniel*, 452 U.S. at 130 *and* Brief for Appellants at 42 - 44.

In *Bush* and *Shaw*, this Court addressed congressional districts that were found to be subject to strict scrutiny because they departed dramatically from traditional redistricting principles. *Shaw* presented North Carolina's congressional plan for review, while *Bush* involved a challenge to congressional districts in Texas. Both of these cases were reviewed by this Court upon a full factual record addressing the constitutionality of the various congressional districts. *Shaw*, 64 U.S.L.W. at 4438 - 39; *Bush*, 64 U.S.L.W. at 4454 - 56. In both cases, this Court ruled, based on the extensive factual record developed in the district court proceedings, that the congressional districts under review were unconstitutional under the Fourteenth Amendment to the United States Constitution because the districts were not narrowly tailored to further a compelling governmental interest. *Shaw*, 64 U.S.L.W. at 4440 - 43; *Bush*, 64 U.S.L.W. at 4459 - 61.

In these cases, this Court took care to instruct that the use of race as a factor in districting does not by itself invoke strict scrutiny, and that in any event, strict scrutiny is not necessarily fatal. For example in *Miller*, 115 S.Ct. at 2490, *citing*, *Shaw v. Reno*, 509 U.S. 630, 646 (1993), this Court stated:

> " '[W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes.' "

And in *Bush*, this Court stated:

> "Strict scrutiny does not apply merely because redistricting is performed with consciousness of race. *See Shaw I supra*, at 646. Nor does it apply to all cases of intentional creation of majority-minority districts. *See Dewitt v. Wilson*, 856 F.Supp. 1409 (E.D.Cal. 1994) (strict scrutiny did not apply to an intentionally created compact majority-minority district), *summarily aff'd*, 515 U.S. ___ (1995) ...."

Bush, 64 U.S.L.W. at 4454.

Finally, *Bush* does not support Appellee's contention that a statement made by the County's attorney in a status conference may substitute for the probing factual inquiry that both precedes and drives the strict scrutiny analysis. Even direct evidence of a decision to create a majority-minority district is but an "ingredient" in the analysis, insufficient by itself to trigger strict scrutiny. *Id.* at 4455.[10]

These cases do not, as the Appellee suggests, invalidate the formulation of compact majority-minority districts. On the contrary, these decisions give guidance to district courts in carefully crafting election plans to remedy violations of the Voting Rights Act. *Bush*, 64 U.S.L.W. at 4462.

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[10] The Appellee's contention that the election plan is unconstitutional for lack of narrow tailoring suffers from the same dearth of factual findings. Only an evidentiary hearing can produce the factual record necessary to determine the effect of a remedial plan on the political participation of Latino voters in Monterey County. *See, e.g., City of Port Arthur*, 459 U.S. at 165 - 66.

In summary, the constitutionality of the temporary election plan is not properly before this Court. The district court's reliance on *Miller* to order into effect an unprecleared countywide plan was in error and should be reversed.

V. THERE ARE NO TENTH AMENDMENT ISSUES JUSTIFYING AFFIRMANCE OF THE DISTRICT COURT'S ORDER

The Appellee seeks to challenge the propriety of the County's designation as a Section 5 covered jurisdiction and in doing so, suggests that the Tenth Amendment somehow bars Section 5 remedial relief. Yet the issue is not properly before this Court as it has never been considered by the district court.[11] In any event, this Court's precedent firmly rejects any such Tenth Amendment concerns.

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[11] Furthermore, the Voting Rights Act explicitly provides a remedy for jurisdictions to secure an exemption from Section 5. This "bail-out" provision allows a covered jurisdiction with an established record of compliance with the Voting Rights Act to institute a declaratory judgment action in the United States District Court for the District of Columbia and seek an exemption from the Section 5 preclearance requirements. 42 U.S.C. § 1973b. Jurisdictions should not be allowed to circumvent this statutory procedure by seeking an exemption from Section 5 review as a defense to an action brought by private plaintiffs seeking to enforce Section 5. Finally, the "bail-out" action must be brought by the state or political subdivision which was designated as a jurisdiction subject to Section 5. Since the State of California was not designated as a Section 5 covered jurisdiction, it is doubtful that the State is authorized to bring a "bail-out" action on behalf of the County. *See City of Rome*, 446 U.S. at 167.

In *South Carolina v. Katzenbach*, this Court held that the Section 5 preclearance requirement is an appropriate method for Congress to use to enforce the Fifteenth Amendment. 383 U.S. 301, 329 - 37 (1966). The Fifteenth Amendment was "specifically designed as an expansion of federal power and an intrusion on state sovereignty." *City of Rome*, 446 U.S. at 179. Thus, the Voting Rights Act, including Section 5, is "an appropriate means for carrying out Congress' constitutional responsibilities." *South Carolina v. Katzenbach*, 383 U.S. at 308.

Appellee seeks to obscure this clear precedent by overstating this Court's concerns in *Miller* regarding potential Tenth Amendment issues. Appellee Brief at 31 -32 ("In *Miller*, this Court suggested that, *absent strong evidence of discrimination*, Congress' application of Section 5 restrictions and preclearance requirements to the States may [violate the Tenth Amendment].") (emphasis added). In fact, this Court's concerns were much narrower and related specifically to the Justice Department's "maximization policy." *Miller*, 115 S.Ct. at 2493. "In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld." *Id.* This Court thus concluded: "There is no indication Congress intended such a far-reaching application of § 5 so we reject the Justice Department's interpretation of the statute and avoid the constitutional problems that interpretation raises." *Id.*

In stark contrast, the district court here did not make any findings regarding a "maximization policy." (Nor, given the compact nature of the relevant districts, could it have.) But, most fundamentally, this Court's concerns in *Miller* surely could not be triggered before the district court conducted an evidentiary hearing and concluded that the June 1995 plan

somehow violated the Fourteenth Amendment.

CONCLUSION

The November 1, 1995, Order is inconsistent with this Court's precedent initially established in *South Carolina v. Katzenbach* which stated that Section 5 was a necessary and appropriate Congressional response to combat the pervasive voting discrimination experienced by minority communities. Congress reauthorized Section 5 in 1970, 1975, and 1982, because of the extensive record supporting the continued necessity for the preclearance protections. *See* S. REP. No. 417, 97th Cong., 2d Sess., 4 - 15 (1982). By implementing a countywide method of election which has not secured Section 5 approval, the district court's Order represents a circumvention of the Voting Rights Act which would result in the nullification of the Section 5 preclearance provisions. For these reasons, the district court's November 1, 1995, Order must be reversed.

Respectfully Submitted,

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